UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/434,394	11/04/1999	JOHN S., YATES JR.	114596-20-4009	3898

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EXAMINER
NGUYEN BA, HOANG VU A

ART UNIT	PAPER NUMBER
2192	

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/434,394	Applicant(s) YATES ET AL.
	Examiner Hoang-Vu A Nguyen-Ba	Art Unit 2122

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>28 February 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☒ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: *See attached Advisory Actiont.* (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-59 and 61-65*.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.

ANTONY NGUYEN-BA
PRIMARY EXAMINER

Hoang-Vu Antony Nguyen-Ba
Primary Examiner
Art Unit: 2122

U.S. Patent and Trademark Office

PTOL-303 (Rev. 9-04)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20050323

Advisory Action

1.	This advisory action is responsive to Amendment After Final filed February 28, 2005.

2.	In response to Applicants' arguments that an obviousness-type double patenting rejection of claims 1-59 and 61-65 over U.S. Patent No. 6,789,181 to Yates is improper, the Examiner notes the following:

	a.	the U.S. Patent No. 6,789,394 referred to in the previous Office action is incorrect. The correct U.S. Patent Number should be U.S. Patent No. 6,789,181 to Yates which is co-owned by ATI.International;

	b.

Instant claim 1	Patent claim 19
A computer comprising:	A computer comprising: (claim 16)
a. a binary translator programmed to translate at least a segment of a binary representation of a program from a first representation in a first instruction set architecture to a second representation in a second instruction set architecture, a sequence of side-effects in the second representation differing from a sequence of side-effects in the translated segment of the first representation, the second representation distinguishing individual memory loads that are believed to be directed to well-behaved memory from	a binary translator programmed to translate at least segment of a program from a first representation in the instruction set to a second representation in a second instruction set architecture, a sequence of side-effects in the second representation differing from a sequence of side-effects in the translated segment of the first representation;

memory loads that are believed to be directed to non-well-behaved memory devices;	
b. instruction execution circuitry designed, while executing the second representation, to identify an individual memory-reference instruction, or an individual memory reference of an instruction, a side-effect arising from the memory reference having been reordered by the translator, the memory reference having been believed at translation time to be directed to well-behaved memory but that at execution time is found to reference a device with a valid memory address that cannot be guaranteed to be well-behaved, based at least in part on an annotation encoded in a segment descriptor, and	
c. based in the distinguishing, to identify whether the differences in sequence of side-effects may have a material effect on the execution of the program; and	instruction execution circuitry and/or software designed to identify cases during execution of the second representation in which the difference in sequence of side-effects may have a material effect on the execution of the program,

d. circuitry and/or software designed to establish program state equivalent to a state that would have occurred in the execution of the first representation, and to resume execution of the translated segment of the program in the first instruction set.	to establish a program state equivalent to a state that would have occurred in the execution of the first representation, and to resume execution of the program from the established state in an execution mode that reflects the side-effects sequence of the first representation.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in instant claim 1 is merely an obvious variation of that claimed in patent claim 19. The feature that is missing in patent claim 19 is feature b. However, this feature is claimed in patent claim 18. Regarding the added limitation "based at least in part on an annotation encoded in a segment descriptor" to instant claim 1, the Examiner notes that this feature is deemed inherent to Yates teachings of distinguishing individual memory loads that are believed to be directed to well-behaved memory from memory loads that are believed to be directed to non-well-behaved memory devices (18:25-65) in patent no. 6,789,181. Without this annotation encoded in a segment descriptor, it is not possible for the second representation to distinguish individual memory loads that are believed to be directed to well-behaved memory from memory loads that are believed to be directed to non-well-behaved memory devices.

Similar reasoning also applies to the remaining claims of the instant application.

ANTONY NGUYEN-BA
PRIMARY EXAMINER